82-519

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CASE NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

JOSEPH P. COUNIHAN, JR., As Temporary Administrator of the Estate of ANNE FAHEY COUNIHAN, Deceased, for the benefit of said Estate and himself Individually, and for the benefit of JOSEPH P. COUNIHAN, ANNE COUNIHAN, SHEILA COUNIHAN WINDERS, and DEBRA COUNIHAN CARROLL,

Appellants,

VS.

DEPARTMENT OF TRANSPORTATION OF GEORGIA; CHATHAM COUNTY COMMISSIONRS; JOE E. LAMBRIGHT, Individually, and as Chatham County Administrator; HUDSON WISE, Individually and as Administrator of Chatham County Public Works; and AL ST. LAWRENCE, Individually and as Chief of Chatham County Police,

Appellees.

JURISDICTIONAL STATEMENT

ON APPEAL FROM
THE COURT OF APPEALS OF GEORGIA

Michael J. Bowers
Attorney General of Georgia
and
Fred S. Clark
Chatham County Attorney
Counsel of Record
For Appellees

Joseph B. Bergen
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31401
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THE UNITED STATES

OCTOBER TERM, 1981

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Appellees.

APPEAL FROM THE COURT OF APPEALS
FOR THE STATE OF GEORGIA

JURISDICTIONAL STATEMENT

I

QUESTIONS PRESENTED

The United States Court of Appeals for the State of Georgia sustained Motions to Dismiss a wrongful death action brought against the Department of Transportation of Georgia, Chatham County Commissioners, Chatham County Police Chief, Chatham County Administrator, and Chatham County Public Works Chief for damages caused by these public bodies and public officials negligently failing to maintain a bridge in Chatham County, Georgia, and maintaining a nuisance on this bridge that caused the death of Ann Fahey Counihan. The dismissal of this action by the Superior Court of Chatham County was on the ground of sovereign immunity.

The question presented is whether Ga.Code Sec. 95A-304 providing that the

Department of Transportation may be sued in such actions, as permitted by law; and whether Ga.Code Sec. 95A-305 providing that the Department of Transportation shall defend any suit for damages in a cause of action accruing on a public road brought against any county under existing laws, are unconstitutional in view of Ga.Code. Sec. 69-301 providing that municipal corporations shall be liable for neglect to perform or for improper or unskillful performance of their ministerial duties, as a denial of due process and equal protection of law guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States and, Article I, Secs. I and II of the Constitution of the State of Georgia, as codified in Ga.Code. Secs.2-101 and 2-203, in that Ga.Code. Secs.95A-304 and 95A-305 fail to provide that counties of the State of Georgia

shall be liable for neglect to perform or for improper or unskillful performance of their ministerial duties and to permit suits for such negligence against counties as does Ga.Code . Sec.69-301 holding municipal corporations liable and permitting suits for such negligence.

II

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III.

OPINION BELOW

The decision of the Court of Appeals of Georgia dated April 21, 1982 (Appendix A infra.) is reported at 162 Ga. App. 374 (___S.E.2d__).

IV

STATEMENT OF GROUNDS ON WHICH JURISDICTION IS INVOKED

(a) Nature of the Proceedings.

This is an Appeal from the decision of the Court of Appeals of Georgia that denied a right of action against the Department of Transportation of Georgia; the Chatham County Commissioners; the Chatham County Police Chief; the Chatham County Administrator; and the Chatham County Public Works Chief for wrongful death by reason of the negligences on the ground that these public parties and public

officials are immune from suit by reason of sovereign immunity as no Georgia statutory permission exists to allow such a suit. The Appellants submit that the Georgia Statutes pertaining to suits against these public parties and public officials are unconstitutional in that they deny due process and equal protection of laws in violation of the Fifth and Fourteen Amendment to the Constitution of the United States and the Constitution of the State of Georgia which presents a substantial federal question.

(b) Judgment sought to be reviewed.

The trial court entered final orders sustaining the defendants' Motion to Dismiss on July 20, 1981, from which final order the plaintiffs appealed to the Court of Appeals of Georgia.

The Court of Appeals of Georgia, in a decision rendered on April 21, 1982, upheld the dismissal of the complaint by plaintiffs on the ground that there has been no waiver of sovereign immunity by legislation or otherwise or by court decree in order that the suit filed by plaintiffs may be maintained, holding that Ga.Code. Secs. 95A-304 and 95A-305 do not constitute consent of the sovereign to allow the Department of Transportation to be sued in a wrongful death action such as filed by plaintiffs.

On May 19, 1982, the Court of Appeals entered an order denying a motion by the Appellees for a rehearing.

On June 24, 1982, the seven member Supreme Court of Georgia denied without opinion the Writ of Certiorari to the Court of Appeals of Georgia to review the decision of the Court of Appeals of Georgia upholding the dismissal of

Appellees' complaint by the Superior Court of Chatham County, Georgia, with two Justices dissenting.

(c) Statute Conferring Jurisdiction.

The jurisdiction of the Supreme Court of the United States is conferred by Title 28 United States Code Section 1257(2) permitting review by the Supreme Court of the United States of final judgments rendered by the highest court of a state in which a decision could be had by appeal where there is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution and the decision is in favor of its validity.

V.

CONSTITUTIONAL PROVISIONS

The constitutional provisions involved in this case are the Fifth and

Fourteenth Amendments to the Constitution of the United States, the text of which is found in the Appendix to this Jurisdictional Statement.

VI.

STATUTES INVOLVED

The statutes involved are Ga. Code Secs. 95A-304 and 95A-305, and Ga. Code Sec. 69-301 also set forth in the Appendix to this Jurisdictional Statement.

VII.

STATEMENT OF THE CASE

The Appellants filed their complaint for damages against the Appellees in the Superior Court of Chatham County, Georgia, seeking damages for the negligent design, construction and maintenance by the Department of Transportation of a bridge that is part of the Georgia State Highway System and against the other defendants for

negligence in failing to warn their decedent of ice on a bridge in Chatham County that the defendants negligently allowed to accumulate that caused the decedent to lose control and wreck her vehicle as she was passing over this bridge that resulted in the death of their decedent. This damage claim also was based on the claim that the defective and hazardous condition of this bridge created a nuisance that rendered the bridge unsafe for public travel. The defendants all filed motions to dismiss the complaint of plaintiff with one of the grounds asserted by each of the defendants being that the defendants may not be sued without express consent of the sovereign State of Georgia and this consent had not been given for the suit filed by plaintiffs. The sovereign immunity question was first raised in the court of first instances by the Motion to

Dismiss filed by defendants that was sustained by the trial court by granting the Motion to Dismiss on the ground of sovereign immunity in its Order of July 20, 1981. The appellants raised the question of the constitutionality of the invoking of sovereign immunity under the facts of this case in their Enumeration of Errors and their brief filed in the Court of Appeals of Georgia seeking to reverse the dismissal of Appellees' suit or complaint on the ground of sovereign immunity.

VIII.

STATEMENT OF REASONS WHY QUESTIONS PRESENTED ARE SUBSTANTIAL

The question presented on this appeal has never been past upon by this court and is of great public importance to the citizens of the State of Georgia who are being denied claims against the

Department of Transportation and the respective counties of the State of Georgia based on negligences resulting in injuries caused by negligent design, construction and maintenance of bridges that are part of the Georgia State Highway System by reason of the statutes of Georgia not holding the Georgia Department of Transportation and counties of the State of Georgia liable for negligence in the performance of their ministerial duties when the statutes of the State of Georgia hold municipal corporations liable for their negligence in the performance of ministerial duties and permit suit against municipal corporations such negligence that is denied citizens of Georgia where the Department of Transportation and a county is involved. The application of these laws are not equal and deny citizens of the State of Georgia due process of law

in damage claims against the Department of Transportation and the counties of the State of Georgia not denied citizens who have identical claims against municipalities of the State of Georgia. This question should now be determined by the Supreme Court of the United States since the Supreme Court of Georgia itself is divided in its decision denying the Writ of Certiorari in this case.

The appellants suggest that under these circumstances the question should not be considered with out plenary consideration, with briefs on the merit and oral arguments for its resolution.

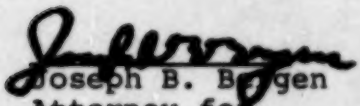
IX

CONCLUSION

The question presented by this appeal is substantial and of public importance. The case is one of first impression and probable jurisdiction of

this court should be noted.

Respectfully



Joseph B. Bergen
Attorney for
Appellants

X

SUPREME COURT OF THE UNITED STATES

JOSEPH P. COUNIHAN, JR.,
As Temporary Administrator of
the Estate of ANNE FAHEY COUNIHAN,
Deceased, for the benefit of said
Estate and himself individually, and
ANNE COUNIHAN, SHELIA COUNIHAN WINDERS,
and DEBRA COUNIHAN CARROLL,

Appellants,

vs.

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WISE, Individually and as Administrator
of Chatham County Public Works; and AL
ST. LAWRENCE, Individually and as Chief
of Chatham County Police,

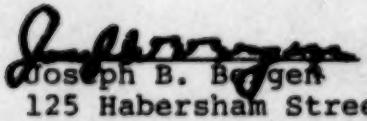
Appellees.

ENTRY OF APPEARANCE

The Clerk will please enter my appearance as Counsel for JOSEPH P. COUNIHAN, JR.,as Temporary Administrator of the Estate of ANNE FAHEY COUNIHAN, Deceased, for the benefit of said Estate and himself individually, and for the

benefit of JOSEPH P. COUNIHAN, ANNE COUNIHAN, SHEILA COUNIHAN WINDERS, and DEBRA COUNIHAN CARROLL, who, in this Court, are Appellants.

I certify that I am a member of the Bar of the Supreme Court of the United States.



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PROOF OF FILING AND SERVICE

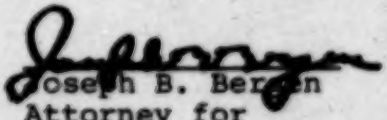
I, the undersigned JOSEPH B. BERGEN, Attorney of Record for the Appellants and a member of the Bar of the Supreme Court of the United States, depose and say that on the 22nd day of September, 1982, I filed 40 copies of the foregoing Jurisdictional Statement to the Supreme Court of the United States with Mr. Alexander L. Stevas, Clerk of the Supreme Court of the United States and I served three copies of the foregoing Jurisdictional Statement to the Supreme Court of the United States on the Honorable Michael J. Bowers, Attorney General of the State of Georgia, whose Post Office address is: 132 State Judicial Building, Atlanta, Georgia, 30334, and Fred S. Clark, Esquire, Chatham County Attorney, whose Post Office address is: Lee and Clark, Post Office Box 8205, Savannah, Georgia,

31412, who are all the parties required to be served, by placing said copies of said Jurisdictional Statement in an authorized depository for mail at the United States Post Office at Savannah, Georgia in a properly addressed envelope with sufficient prepaid postage thereon to insure First Class Certified Mail delivery within the time allowed for

filing to Messrs. Stevas and Bowers

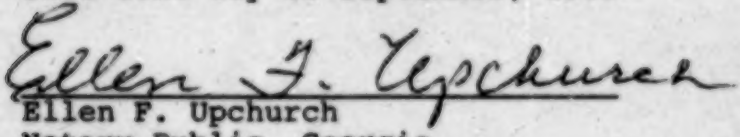
and by hand delivery to Mr. Clark.

This 22nd day of September, 1982.



Joseph B. Bergen
Attorney for
Appellants

Sworn to and subscribed before me
This 22nd day of September, 1982



Ellen F. Upchurch
Notary Public, Georgia

[Notarial Seal]
My commission expires: October 13, 1985.